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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,546	11/29/1999	DAVID WALLACH	WALLACH=23	2755
1444	7590	09/22/2004	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			WHITEMAN, BRIAN A	
			ART UNIT	PAPER NUMBER
			1635	
DATE MAILED: 09/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Communication Re: Appeal**

**Application No.**

09/380,546

**Applicant(s)**

WALLACH ET AL.

**Examiner**

Brian Whiteman

**Art Unit**

1635

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:
- (a) ☐ it was not timely filed.
  - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
  - (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
  - (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$\_\_\_\_\_.
  - (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
  - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.
2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
  - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
  - (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).**

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☒ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (b) ☒ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
  - (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
  - (d) ☒ other: See Continuation Sheet
4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☒ is abandoned because there are no allowed claims.
  - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
  - (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

*Scott D. Pribe*

**SCOTT D. PRIEBE, PH.D  
PRIMARY EXAMINER**

Continuation of 3. (d) Other: extension of time letter filed on 5/21/04 indicated that application '546 was being abandoned in view of a CON/DIV/CIP but not did not indicated which. On 9/20/04, Allen Yun indicated that a CON had been filed. .